Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1869

DON REHAHN, et al.,

Petitioners,

—v.—

GENERAL MOTORS CORPORATION and
LOCAL UNION 160, UAW,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT GENERAL MOTORS CORPORATION'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statute Involved	2
Counterstatement of the Case	3
ARGUMENT—	
I. Petitioners Have Failed to State a Claim Upon Which Relief Can Be Granted	4
II. The Decision Below Was Correct Because Petitioners Did Not Exhaust Their Reasonable Internal Union Remedies Under the UAW's Constitution	8
CONCLUSION	11
APPENDIX—	
Memorandum Opinion	A1
Judgment	A5
Order (Feb. 6, 1979)	A6
Order (March 19, 1979)	A8
Affidavit of William J. Beckham	A9

Table of Authorities

Cases:

	PAGE
Amalgamated Assoc. of Street, Electric Ry. & Motor Employees of America v. *Lockridge*, 403 U.S. 274, 301 (1971)	8
Balowski v. *UAW*, 372 F.2d 829 (6th Cir. 1967)	8
Bieski v. *Eastern Automobile Forwarding Co.*, 231 F.Supp. 710 (D. Del. 1964), aff'd 354 F.2d 414 (2d Cir. 1965)	5
Bsharah v. *Eltra Corp.*, 394 F.2d 502 (6th Cir. 1968)	9
Dorn v. *Meyers Parking System*, 395 F.Supp. 779 (E.D. Pa. 1975)	8
Ford Motor Co. v. *Huffman*, 345 U.S. 330, 338 (1952)	8
Harrington v. *Chrysler Corp.*, 303 F.Supp. 495 (E.D. Mich. 1969)	9
Hines v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976)	6, 7
Imbrunnone v. *Chrysler Corp.*, 336 F.Supp. 1223 (E.D. Mich. 1971)	9
McCloskey v. *General Motors Corp.*, 88 LRRM 2414 (N.D. Ohio 1974)	9
Republic Steel Corp. v. *Maddox*, 379 U.S. 650 (1965)	5
Ross v. *Molfitt*, 417 U.S. 600, 616-17 (1974)	11
Russom v. *Sears, Roebuck & Co.*, 558 F.2d 439 (8th Cir. 1977), cert denied 98 S.Ct. 481 (1977)	6
Ruzicka v. *General Motors Corp.*, 523 F.2d 306 (6th Cir. 1975)	8

	PAGE
See v. *Automobile Workers Local 417*, 83 LRRM 2512 (6th Cir. 1973), cert denied 414 U.S. 1066 (1973)	10
Selzer v. *Bank of Bermuda Ltd.*, 385 F.Supp. 415, 419 (S.D.N.Y. 1974)	7
Tomera v. *Galt*, 511 F.2d 504 (7th Cir. 1975)	7
Vaca v. *Sipes*, 385 U.S. 895 (1967)	2, 4, 5, 8
United Steelworkers of America v. *American Mfg. Co.*, 363 U.S. 564 (1960)	5, 7, 8
United Steelworkers of America v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960)	5, 7, 8
United Steelworkers of America v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960)	5, 7, 8

Statute:

Labor Management Relations Act of 1947 § 301, 28 U.S.C. § 185 (1970)	2, 3

Rules:

Rule 9(b), Federal Rules of Civil Procedure	7
Rule 19, United States Supreme Court Rules	11, 12

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RESPONDENT GENERAL MOTORS CORPORATION'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, General Motors Corporation ("Employer"), opposes the petition for a writ of certiorari filed herein by Don Rehahn, et al. The petition asks this Court to review the decision of a unanimous panel of the Court of Appeals for the Sixth Circuit affirming the District Court's refusal on Respondent's motion for summary judgment to upset a final and binding labor arbitrator's determination.

The petition presents no compelling issues or important reasons why the writ should be granted. Petitioner is merely requesting this Court to review the record to determine if the District Court abused its discretion by granting Respondent's motion for summary judgment. The

Sixth Circuit has already done so and found no such abuse. The petition should be denied.

Opinions Below

The opinion of the District Court granting summary judgment in favor of Respondents, the order and opinion of the Court of Appeals for the Sixth Circuit affirming the summary judgment and its order and opinion denying Petitioner's petition for rehearing have not been reported. They are printed in the Appendix hereto appended (A1-A13).

Jurisdiction

The jurisdictional requisites for filing a petition for certiorari are adequately set forth in the petition.

Questions Presented

1. Whether Petitioners failed to state a claim for relief under the standard of *Vaca* v. *Sipes,* 385 U.S. 895 (1967) and other Supreme Court precedent.

2. Assuming, *arguendo,* that a claim is stated under *Vaca* v. *Sipes,* must Petitioners exhaust their internal union remedies under the UAW's Constitution?

Statute Involved

Section 301 of the Labor Management Relations Act of 1947, as amended, 28 U.S.C. §185.

Counterstatement of the Case

Essentially, the suit brought by Petitioners, Don Rehahn, et al., challenges actions taken by Respondents General Motors Corporation and Local 160, UAW, in regard to Petitioners' employment at General Motors Corporation's Fisher Body Division.

Petitioners' action was commenced August 28, 1974, in the Circuit Court for the County of Wayne, Michigan. It was removed to the District Court under Section 301 of the Labor Management Relations Act of 1947, as amended, 28 U.S.C. §185.

In their complaint the thirty-six (36) Petitioners alleged that General Motors Corporation ("Employer") and their local union, UAW Local 160 ("Local") acted in concert by not recognizing Petitioners' journeyman status and by denying them employment in violation of the 1970 collective bargaining agreement between the Employer and the International Union, UAW ("International").

The complaint alleged unfair representation on the part of the Local and that the Employer engaged in collusion with the Local to deny Petitioners their jobs and their rights under the collective bargaining agreement.

Both the Local and the Employer moved for summary judgment, supported by affidavits that were not controverted, arguing that the allegations in the complaint did not constitute an adequate claim of unfair representation; that Petitioners' claim was barred by a final and binding arbitration award; and that Petitioners had not exhausted their reasonable internal union remedies.

Following submission of the motions and oral argument by the parties on February 13, 1976, the District Court

granted defendants' motions for summary judgment (A1-A6). The basic grounds relied upon by the District Court were the precise ones advanced by the Local and the Employer (A2, A4, A5).

Subsequently, the District Court on October 28, 1976 issued a final opinion dismissing Petitioners' complaint.

Following the adverse decision by the District Court, Petitioners filed their notice of appeal to the United States Court of Appeals for the Sixth Circuit, wherein the same arguments were raised.

The Court of Appeals affirmed the decision of the District Court and found no abuse of discretion (A7-A8).

Petitioners' petition for a writ of certiorari followed.

ARGUMENT

I.

Petitioners Have Failed to State a Claim Upon Which Relief Can Be Granted

This Court has set out the overriding principles by which the lower courts must be guided in determining whether there has been a breach of a union's duty of fair representation. In *Vaca* v. *Sipes*, 386 U.S. 171 (1967) this Court stated:

> "Other nebula in the nomenclature of the unfair-representation exception are that the Union's conduct toward a member of the collective bargaining unit is *arbitrary, discriminatory*, or in *bad faith*." [Emphasis added]

Id. at 190.

This Court has repeatedly emphasized that peaceful resolution of industrial disputes through arbitration is the preferred mechanism to be employed by unions and employers. *United Steelworkers of America* v. *American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 575 (1960); and *United Steelworkers of America* v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960) ("The Steelworkers Trilogy"). Only when individual union members are able to prove fraud, deceitful action or dishonest conduct by the union and their employer may an award be set aside. *Bieski* v. *Eastern Automobile Forwarding Co.*, 231 F.Supp. 710 (D. Del. 1964), aff'd. 354 F.2d 414 (2d Cir. 1965).

It is only in the rarest of circumstances (i.e. arbitrary, discriminatory or bad faith conduct on the part of employer or union) that courts will upset an arbitrator's award. *Vaca* v. *Sipes, supra.* As Judge Gubow stated in his memorandum opinion below:

> "Mere 'conclusory words . . . without a concomitant showing of lack of good faith' is insufficient to set forth a claim. *Balowski* v. *UAW*, 372 F.2d at 835, quoting *Hardcastle* v. *Western Greyhound Lines*, 303 F.2d 182, 186 (9th Cir.), *cert. denied* 371 U.S. ——."

Indeed, in *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650 (1965), this Court said in pertinent part: "If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement." *Id.* at 653.

As this Court said in *United Steelworkers of America* v. *American Mfg. Company, supra*, in explaining the role of the courts in relation to binding arbitration:

> "The function of the Court is very limited when the parties have agreed to submit all questions of contract

interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator . . . The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration not merely those which the court would deem meritorious."

• • •

"When the judiciary undertakes to determine the merits of a grievance under the guise of interpreting the grievance procedure of collective bargaining agreements, it usurps a function which under the regime is entrusted to the arbitration tribunal." (*Id.* at 567, 568-569)

No evidence such as would justify upsetting the arbitrator's award herein has been found by either the District Court or the Court of Appeals. Indeed, there is neither allegation nor evidence that the union's action in processing Petitioners' grievance "seriously undermined the integrity of the arbitral process." *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976). While Petitioners allege that the union raised the wrong defense in the arbitration proceeding, mere errors in judgment (assuming there was such an error) are insufficient to support a claimed breach of the duty of fair representation. *Russom* v. *Sears, Roebuck & Co.*, 558 F.2d 439 (8th Cir. 1977), *cert. denied* 98 S.Ct. 481 (1977).[1]

[1] It is well recognized that reviewing courts do not sit to analyze the facts of a given case on appeal. "We do not grant a certiorari to review evidence and discuss specific facts". *United States* v. *Johnston*, 268 U.S. 220, 227 (1925). Nor is this a case where the union was negligent in not investigating all the facts of the case. See also *Lowe* v. *Pate Stevedoring Co.*, 558 F.2d 769, petition for rehearing en banc denied, —— F.2d ——, 97 LRRM 2024 (5th Cir. 1977).

Rule 9(b) of the Federal Rules of Civil Procedure ("FRCP") requires that "in all averments of fraud . . . the circumstances constituting fraud . . . shall be stated with particularity." The purpose of this requirement of Rule 9(b) is at least in part to protect defendants against unsupportable claims which at least implicitly attack their integrity. *See, e.g., Selzer* v. *Bank of Bermuda Ltd.*, 385 F.Supp. 415, 419 (S.D. N.Y. 1974). ("The purpose of Rule 9(b) is . . . [*inter alia*] to protect defendants from the detrimental effect to their reputations that may result from fraud charges that cannot be supported by fact"); *Tomera* v. *Galt*, 511 F.2d 504 (7th Cir. 1975). For failure to comply with Rule 9(b), Petitioners' complaint was properly found to be deficient on its face.

Despite the principles clearly-established in the *Steelworkers Trilogy*, Petitioners herein are asking this Court to set aside the arbitrator's award so that they may relitigate the issues in the arbitration case. Petitioners place total reliance on this Court's decision in *Hines* v. *Anchor Motor Freight, Inc.* This is not, however, a case in which the union refused to press or only perfunctorily pressed Petitioners' claims as in *Hines*. The Petitioners herein were vigorously represented by an International Representative of the Union.[2]

[2] Indeed, the National Labor Relations Board has held that the duty of fair representation does not require that every option be utilized or that a grievance be advocated in a perfect manner, or that the union's efforts on behalf of the employee be optimal. *Teamsters, Local 355 (Monarch Institutional Fords)*, 229 NLRB No. 1232 (1977)).

The Union and the Employer did all that was expected or required of them. A union is given great latitude in handling grievances. *See Balowski* v. *UAW*, 372 F.2d 829 (6th Cir. 1967) relying upon *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 338 (1952). Here the affidavits submitted by Petitioner purportedly to show inadequate representation hardly bring this case within the very limited exception to the *Steelworkers' Trilogy* doctrine. There is not a scintilla of evidence to support a conclusion that the Union acted in a manner that was *"arbitrary, discriminatory or in bad faith."* *Vaca* v. *Sipes*, 286 U.S. at 190 (emphasis added). It is a well-established principle that for Petitioners to prevail, they must prove by "substantial evidence" union "discrimination that is intentional, severe and unrelated to legitimate union objectives." *Amalgamated Assoc. of Street, Electric Ry. & Motor Employees of America* v. *Lockridge*, 403 U.S. 274, 301 (1971).

The petition for certiorari should be denied for failure of Petitioners to demonstrate any basis upon which to attack the finality of the arbitration award in this case.

II.

The Decision Below Was Correct Because Petitioners Did Not Exhaust Their Reasonable Internal Union Remedies Under the UAW's Constitution

This is not a case wherein the Union refused to process a grievance, *Dorn* v. *Meyers Parking System*, 395 F.Supp. 779 (E.D. Pa. 1975), or where the employees tried for a long period of time to exhaust their administrative remedies within the structure of their union without obtaining relief or a final disposition of their claim, *Ruzicka* v. *General Motors Corp.*, 523 F.2d 306 (6th Cir. 1975). Rather this is a case where the Union vigorously processed the

grievance and the individuals "sat on their rights" by not exhausting their internal union remedies. Moreover, there is no affidavit of any plaintiff that they were unfamiliar with or ignorant of the union's internal procedures. *McCloskey* v. *General Motors Corp.*, 88 LRRM 2414 (N.D. Ohio 1974). Nor was there any reliance upon a union officer's statement that such procedure would be senseless or fruitless.

The Constitution of the International Union, specifically outlines the procedures by which union members may appeal unsatisfactory decisions. The Petitioners here did not resort to these measure and for this additional reason the lower court's decision must be affirmed.

Because Petitioners did not exhaust or even pursue all of their available intraunion appeals, a prerequisite to their action against the employer has not been met. *Harrington* v. *Chrysler Corp.*, 303 F.Supp. 495 (E.D. Mich. 1969) (employee's failure to file in writing and in timely fashion an intraunion appeal of the local's refusal to process his grievance barred his Section 301 suit against both the Union and the Company); *Imbrunnone* v. *Chrysler Corp.*, 336 F.Supp. 1223 (E.D. Mich. 1971) (claim against defendant employer and union dismissed for plaintiff's failure to exhaust his internal union remedies where he had failed to plead a breach of the union's duty of fair representation).

Failure to exhaust these internal remedies has repeatedly been held to be a bar to maintenance of a court action and to be sufficient grounds for granting summary judgment. In *Bsharah* v. *Eltra Corp.*, 394 F.2d 502 (6th Cir. 1968), the plaintiff brought suit against her employer and same International Union involved herein alleging a breach of the duty of fair representation. The Court of Appeals upheld granting summary judgment for the Union.

"In sustaining the union's motion for summary judgment, the court held that, assuming the International Union owed a duty to protect appellant, she failed to allege or show any attempt to initiate her intraunion remedies prescribed by the Constitution and by-laws of the International Union and, in this holding, we concur." (394 F.2d at 503)

Bsharah was reaffirmed in *See* v. *Automobile Workers Local 417*, 83 LRRM 2512 (6th Cir. 1973), cert denied 414 U.S. 1066 (1973). Plaintiff therein alleged that the Union breached its duty by not adequately pressing his right to reinstatement pursuant to an arbitration award. The Court of Appeals upheld dismissal of the action. Specifically, the Court stated:

"Upon consideration of the record, briefs and arguments of counsel, we are of the opinion that plaintiff has not exhausted his intraunion remedies, which he was required to do before maintaining this action." *Bsharah* v. *UAW*, 394 F.2d 502, 68 LRRM 2255 (6th Cir. 1968). (83 LRRM at 2513).[3]

For this reason alone, summary judgment dismissing the cause was appropriate and the petition for certiorari should be denied.

[3] Indeed, Petitioners did not even controvert the affidavit of William J. Beckham, Administrative Assistant to the International Union President, stating that the plaintiffs did not exhaust their intraunion appeals (A10-A13).

CONCLUSION

United States Supreme Court Rule 19, highlights the most compelling reason for denial of this petition for a writ of certiorari. As that rule notes, "review on writ of certiorari is not a matter of right . . . and will be granted only where there are special and important reasons therefor." Such reasons generally exist only when the challenged decision conflicts with a decision of another court of appeals; involves an important question of federal law; or departs from the usual course of judicial proceedings so as to require the Court's supervision.

None of these reasons can be advanced on behalf of the present petition. There is no conflict between the challenged decision and that of any other Circuit Court of Appeals. The only issue raised by the petition is the propriety of the lower court's conclusions that no material issue of fact existed. Clearly, this determination raises no question of federal law. Moreover, the petition fails to demonstrate that the challenged decision departed in any way from the usual course of judicial proceedings. As the preceding discussion clearly indicates, the only issue raised in the petition *i.e.*, the propriety of the lower court's determination that there existed no issue of material fact, was thoroughly briefed and argued before the Court of Appeals. The petition, therefore, is founded solely upon what is alleged to be the lower court's errors reviewing this determination. This contention, even if correct, would not be a sufficient reason to grant the petition. As this Court noted in *Ross* v. *Molfitt*, 417 U.S. 600, 616-17 (1974), "[t]his Court's review . . . is discretionary and depends on numerous factors other than the perceived correctness of the judgment we are asked to review."

The present petition presents none of these "numerous factors". Neither does it set forth any of the "special and important reasons" as outlined in Rule 19. Therefore, the petition is without merit and should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

Memorandum Opinion

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed February 13, 1976)

(Don Rehahn, et al., Plaintiffs-Appellants vs. General Motors Corporation, et al., Defendants-Appellees)

The court has before it a motion by Defendant, GENERAL MOTORS CORPORATION (GM), for summary judgment, and motions by Defendant, LOCAL 160, UNITED AUTOMOBILE WORKERS, to dismiss or for summary judgment. Pursuant to Rule 12(b) Federal Rules of Civil Procedure, the motion to dismiss shall be treated as a motion for summary judgment under Rule 56 because matters outside the pleadings are presented in connection with the motion.

Plaintiffs are thirty-six individuals who were employed by GM for periods ranging from seventeen to thirty-one years. They claim that GM wrongfully refused to recognize them as journeymen; their lay-off by GM violated the terms of the collective bargaining agreement between the Defendants; the Defendants engaged in fraudulent and collusive actions before the umpire who heard Plaintiffs' grievance; and the decision by the umpire was contrary to the collective bargaining agreement. Originally filed in state court, GM removed this action pursuant to section 185, Title 29, United States Code.

The motions are based on several contentions. Both the local union and GM argue that (1) Plaintiffs have failed to state a claim for relief under the standard of *Vaca* v.

Sipes, 385 U.S. 895 (1967); and (2) Plaintiffs have failed to exhaust their internal union remedies under the UAW's Constitution. GM argues further that the umpire's decision is final, not appealable to this court, and the three-month statute of limitations provided in the United States Arbitration Act, 9 U.S.C. §12, has run and, therefore, bars Plaintiffs' complaint. The local union contends that, because the international union controls the grievance process, the international union is an indispensable party and has not been joined in this lawsuit, thereby making dismissal proper. Only the initial two arguments made by both Defendants need be considered because it is the court's opinion that those arguments merit summary judgment in Defendant's favor.

The undisputed affidavit of William J. Beckham, the Administrative Assistant to the International Union President, makes clear that the Constitution of the International Union, in articles 32 and 33, provide for appeals by union members of any local union's action. The process includes the filing of an appeal with the International Executive Board (IEB), and an appeal from the decision of the IEB may be taken to the Constitutional Convention Appeals Committee or the Independent Public Review Board. Constitution of the International Union art. 33, §8 (April, 1970).

In this case, one of the Plaintiffs, GEORGE TOTH, took an appeal as far as the IEB, but did not appeal further although he was entitled to do so under the union Constitution. None of the other Plaintiffs exhausted their appeals. Therefore, Plaintiffs have failed to exhaust their internal union remedies. This failure to exhaust is fatal to Plaintiffs' cause of action. *Bsharah* v. *Eltra Corporation,* 394 F.2d 502 (6th Cir. 1968); *Newgent* v. *Modine Mfg.*

Co., 495 F.2d 919 (7th Cir. 1974); *Watson* v. *General Motors, Inc.,* Civil Action No. 74-70837 (E.D. Mich. June 28, 1974).

Although an exception to the exhaustion requirements arises when the employee can prove that his union breached its duty of fair representation, *Vaca* v. *Sipes,* 386 U.S. 171 (1967); *Balowski* v. *UAW,* 372 F.2d 829 (6th Cir. 1967), the Plaintiffs in this case have failed to set forth a proper claim of unfair representation by their union. *Vaca* v. *Sipes* held that "[a] breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." 386 U.S. at 190. In order to properly state a claim on this basis, specific facts must be pleaded to support the allegation of the breach. Mere "'conclusory words . . . without concomitant showing of lack of good faith'" is insufficient to set forth a claim. *Balowski* v. *UAW,* 372 F.2d at 835, quoting *Hardcastle* v. *Western Greyhound Lines,* 303 F.2d 182, 186 (9th Cir.), *cert. denied,* 371 U.S. 920 (1962). The showing that is required must be by the allegation of facts and not the conclusions of facts. *Imbrunnone* v. *Chrysler Corporation,* 336 F. Supp. 1223, 1225 (E.D. Mich. 1971). While it is certainly true that "[w]hether the bargaining representative has acted fairly, impartially and without hostile discrimination depends upon the facts of each case. . . .," *Balowski* v. *UAW,* 372 F.2d 834, it is also true that absent sufficient allegations of fact to support Plaintiffs' claim, summary judgment is appropriate. *Balowski* v. *UAW, supra; Imbrunnone* v. *Chrysler Corporation, supra; Harrington* v. *Chrysler Corporation,* 303 F. Supp. 495 (E.D. Mich. 1969). Moreover, because the case is before the court on a motion for summary judgment, we are not limited to

the allegations of Plaintiffs' complaint, but must look to the material outside the complaint. *Balowski* v. *UAW*, 372 F.2d at 835.

Plaintiffs' complaint, briefs opposing these motions, and affidavits by two of the Plaintiffs fall short of being proof that the union was arbitrary, acted in bad faith, was deceitful or dishonest, or acted in any way that should be considered fraudulent. *See Amalgamated Ass'n of Street, Electric Rwy & Motor Coach Employees of Am.* v. *Lockridge*, 403 U.S. 274, 299 (1971). Outside of the Plaintiff's bald allegations that the Defendants acted collusively or fraudulently, little has been established other than the fact that the Plaintiffs disagree with the ruling of the umpire in arbitration.

Under these circumstances, Plaintiffs' failure to exhaust their internal union remedies cannot be justified because specific facts amounting to substantial evidence of fraud or bad faith on the part of the union have not been shown. It is the opinion of the court that Defendants' motions for summary judgment should be granted.

/s/ Lawrence Gubow
Lawrence Gubow
U. S. District Judge

Judgment

(United States District Court
Eastern District of Michigan
Southern Division)

(Filed February 13, 1976)

(Don Rehahn, et al, Plaintiffs-Appellants vs. General Motors Corporation, et al, Defendants-Appellees)

At a session of said court held at Detroit, Michigan, this 13th day of February, 1976.

Present:

Hon. Lawrence Gubow
U. S. District.

The matter having come before the court on Defendants' motions for summary judgment, and the court having rendered a written opinion on this date,

It Is Ordered, for the reasons set forth in said written opinion, that the Defendants' motions for summary judgment be, and the same hereby are, Granted.

/s/ Lawrence Gubow
U. S. District Judge

Order

(United States Court of Appeals
for the Sixth Circuit)

(Filed February 6, 1979)

(Don Rehahn, et al, Plaintiffs-Appellants vs. General Motors Corporation, et al, Defendants-Appellees) No. 77-1163.

Before:

WEICK, CELEBREZZE and LIVELY,
Circuit Judges.

Upon consideration of the briefs, the appendices, and arguments of counsel, we are of the opinion that the District Court did not err in granting the motion for summary judgment. Plaintiffs' grievance against General Motors Corporation (Company) was processed to the third stage by the Local Union. The International Union, which was not a party to this case, processed the arbitration. The arbitrator decided in favor of the Company. We find no basis for us to interfere with the decision of the arbitrator.

Plaintiffs complain of the strategy adopted by the International Union at the arbitration hearing, which was fully explained and agreed to by the plaintiffs in attendance. We find no evidence of fraud or collusion by the unions with the Company.

Relative to the claim by the plaintiffs that the unions did not fairly represent them in connection with the handling of the grievance, the plaintiffs did not exhaust reasonable internal union remedies which were provided for in the UAW Constitution, and which are binding on them. *Bsharah* v. *Eltra Corp. and UAW*, 394 F.2d 502 (6th Cir. 1968).

Order

Furthermore, all except six of the plaintiffs approved an agreement between the Local and the Company, which resolved questions with respect to their classification and seniority status. As a result of that agreement almost all of the employes were recalled to work.

Because of our disposition of this appeal, we need not consider the issue of the Michigan statute of limitation.

The judgment of the District Court is affirmed.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman
Clerk

Issued as Mandate: March 26, 1979
COSTS: NONE

Order

(United States Court of Appeals
for the Sixth Circuit)

(Filed March 19, 1979)

(Don Rehahn, et al, Plaintiffs-Appellants v. General Motors Corporation, et al, Defendants-Appellees) No. 77-1163.

Before:

WEICK, CELEBREZZE and LIVELY,
Circuit Judges.

Upon consideration of the petition for rehearing, we are of the opinion that the issues on appeal were adequately discussed in our Order affirming the judgment of the District Court, and that the petition for rehearing lacks merit.

It is accordingly ordered that the petition for rehearing be and it is hereby denied.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman, Clerk

Affidavit of William J. Beckham

(Filed November 1, 1974)

STATE OF MICHIGAN,
COUNTY OF WAYNE, *ss.*:

William J. Beckham, being first duly sworn, deposes and says as follows:

My name is William J. Beckham. I reside in the City of Detroit, County of Wayne, State of Michigan. I am employed by the International Union, UAW at its International Headquarters, Solidarity House, Detroit, Michigan.

Since 1957, I have been an Administrative Assistant to the International Union President. Among my areas of responsibility is the administration of the internal union appeals procedure of the International Union, UAW. Accordingly, I make this affidavit on the basis of my own personal knowledge and upon records under my personal control.

Under Article 32 § 2 of the 1970 and 1972 UAW Constitution, any member may appeal a decision of his local union. Section 2 of Article 32 reads as follows:

> "Any member of any Local Union or unit of an Amalgamated Local Union who wishes to challenge any action, decision or penalty of that body or of any official or representative of that body must, in all cases and procedures where no other time limit is specifically set forth by this Constitution, initiate the challenge before the appropriate body of such Local Union or unit within sixty (60) days of the time the challenger first becomes aware or reasonably should have become aware of the alleged action, decision, or penalty of that body."

Further, the International Constitution, Article 32 § 5 allows for a member to appeal to the International Executive Board (IEB).

> Any member feeling himself aggrieved by any action, decision or penalty of his subordinate body shall be entitled to appeal that action, decision or penalty to the International Executive Board only when it has been passed upon by the Local Union membership or delegate body, as the case may be; except where direct appeal to the International Executive Board from some action, decision or penalty of a body other than the Local Union membership or delegate body shall be specifically permitted by another Article of this Constitution.

Also, under Article 32, an aggrieved member may appeal from IEB decisions to the Independent Public Review Board or to the Constitutional Convention Appeals committee.

UAW Local 160 member George Toth appealed to the International Union Executive Board from actions of UAW Local 160, Fisher Body Engineering Unit in regard to the Template makers. Attached are copies of the following documents from files under my control in regard to Brother Toth's appeal on behalf of himself and the other Template makers at Fisher Body Engineering Unit: 1) Letter of November 27, 1970 from Brother Toth to President; 2) Letter of April 20, 1971 from Brother Toth to President Woodcock; 3) July 21, 1971 letter from President Woodcock to Brother Toth and other Template makers; 4) Decision of the IEB Appeals Committee in regard to the Template makers appeal and; 5) February 1, 1972 letter from President Woodcock to Brother Toth.

I have examined the files of the International Union after the letter of President Woodcock of February 1, 1972. My files reveal that no party took any further appeal or action from the decision of the International Executive Board in regard to the above appeal.

I have examined the Complaint in the above matter brought by a number of Template makers against UAW Local 160 and General Motors Corporation. Except for the above described appeal of Brother Toth, which dealt with all of the Local 160 Fisher Engineering Unit Template Makers, my files reveal no appeal to the International Executive Board or to the Independent Public Review Board by any of the plaintiffs in the above matter complaining of actions or decisions by UAW Local 160 or by the International Union.

I am authorized to make this affidavit in the above case. I further swear that I would be competent to testify to the above matters in a court of law.

Further, affiant sayeth not.

Subscribed and sworn to before me
a Notary Public, in and for the
County of Wayne, State of Michigan,
this ..... day of October, 1974.

.....
Elizabeth Pilot, Notary Public
My commission expires:
October 16, 1976